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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
TRAN LIEN, THUY	
ART UNIT	PAPER NUMBER
1781	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/598,105	SEILER, WERNER	
	Examiner	Art Unit	
	Lien T. Tran	1781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 July 2010*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-37* is/are pending in the application.

4a) Of the above claim(s) *14-31* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-13 and 32-37* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *8/17/06*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Applicant's election without traverse of Group I, claims 1-13 and 32-37 in the reply filed on 7/16/10 is acknowledged.

Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claims 1-13 and 32-37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, the recitation of " e.g." is the same as "for example" which renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d). Step a is indefinite; it recites " generating a raw material dry mixture" but it is not known if the dry mixture is generated from the materials recited in the preamble. The body of the claim is not commensurate in scope with the preamble. In step b, a broad range o (30-90 degree C), (20-60%) together with a narrow range (75-85 degree C) (38-45%) that falls within the broad range (in the same claim) is considered indefinite, since the resulting claim does not clearly set forth the metes and bounds of the patent protection desired. See MPEP § 2173.05(c). Also, the recitation of " dough or moistened raw material" is indefinite; are they the same thing or different things because step c recites metering vapor into the dough, not the moistened raw material. Step c has the same problem as step b with the broad range and narrow ranges. Step d, the recitation of " the thusly obtained dough" does not have antecedent basis. In step e, the recitation of " the mass ratio" does not have antecedent basis.

Claim 2 has the same problem as claim 1 with respect the broad limitation (a mixer) follows by a narrow limitation (in particular a two-screw mixer) in the same claim.

Claim 3 has the same problem as claim 2.

Claim 4 has the same problem as claim 2 with respect to the broad limitation (10s -60s) and narrow limitation (preferably 20s-30s). Additionally, the recitation of " the vapor exposure time" does not have antecedent basis.

Claim 5 has the same problem as claim 2.

Claim 6 is vague and indefinite. Claim 6 depends from claim 5 which recite " the moistened raw material"; however, claim 1 recites that the vapor is metered into the dough, not the raw material. Thus, it is not clear what the " the vapor exposure time" is referring to. Also, there is no antecedent basis for the phrase.

Claim 11 is vague and indefinite. It is not clear what applicant means by " working pressure during evaporation"; it is not clear how the evaporation is connected to the process because claim 1 recite injecting vapor. There is no recitation of evaporating.

Claim 13 has the same problem as claim 4. Additionally, the recitation of " the mass ratio does not have antecedent basis.

In claim 32, the phrase " in particular one manufactured according to a method based on claim 1" is indefinite because it is not clear if the product is limited by the method of claim 1 or not. The phrase " in particular" indicates that the product does not need to be processed by the method of claim 1. The broad range (50-100%) together with the narrow range (in particular 75-85%) has the same problem as claim 1. Also,

what does applicant mean by " swells from 50-100%"; does the starch swell to that percent or what.

In claim 34, the recitation of " the dry mass" does not have antecedent basis.

Claim 35 has the same problem as claim 34.

In claim 36, the use of " like" is the same as "such as" which renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Claim 37 has the same problem as claim 1.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 32-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Scharschmidt (3615677).

Scharschmidt discloses a gluten-free pasta. The pasta comprises 45-85% corn flour, 15-40% soy flour and 0-30% wheat flour. The pasta does not contain any fat. The starch in the pasta in partially gelatinized; the degree of gelatinization is from about 10-75%. The starch has been gelatinized to the extent that the starch granules are substantially fully hydrated and swollen, preferably without the occurrence of a large degree of granule rupturing. (see col. 1 lines 60-65, col. 4 lines 31-55 and the examples)

The claimed product is not limited by the process because of the language " in particular". However, even if the product is limited by the process, the determination of patentability in ""product-by-process" claim is determined based solely on the product, not how it is made. The property in claim 34 is inherent in the Scharschmidt product because it is the same product as claimed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4, 7-13 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scharschmidt (3615677).

Scharschmidt discloses a process of making high protein pasta products. The process comprises the steps of forming a raw dry mixture of 45-85% corn flour, 15-40% soy flour and 0-30% wheat flour, metering water into the mixture to form a dough, extruding the dough into the desired form and drying the shaped paste product to a final moisture content of less than about 12%. The process comprises the step of partially

gelatinizing the starch during extrusion or after extrusion or prior to extrusion. The gelatinization can be effected during the extrusion by jacketed heating equipment, such as steam; live steam can be sparged directly into the dough during extrusion. The total moisture of the composition being extruded is about 25-50%. Additional additives such as hydrophillic colloids , egg, protein, etc.. can be added to the dough. (see col. 1 lines 60-75, col. 2-4, col. 5 lines 5-15 and the examples)

Scharschmidt does not disclose the temperature of the water and vapor, the ratio of water to vapor, the vapor exposure time, the adding of monoglyceride, diglyceride or hardened fat , the pressure as claimed and making fresh pasta.

Parameters such as water temperature, vapor temperature, time and pressure are effective-result variable which can readily be determined by one skilled in the art to obtain the most optimum product. It would have been obvious to one skilled in the to determine the temperature for optimum mixing and gelatinization. The degree of gelatinization of the starch in the Scharschmidt product falls within the range claimed for the product; thus, it is expected the steam temperature and exposure time are similar to the ones claimed. It would have been obvious to one skilled in the art to determine the proper water to vapor ratio to obtain the desired consistency and gelatinization. Such parameter can be determined by one skilled in the art through routine experimentation. It would have been obvious to add emulsifier such as monoglyceride to improve the texture and flavor of the pasta. Emulsifier is well known for such purpose. Adding an additive for its art-recognized function would have been obvious to one skilled in the art. It would have been obvious to omit the drying step when desiring to make fresh pasta.

Claims 5-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scharschmidt in view of Tong et al (GB1097795).

The teaching of Scharschmidt is described above. Scharschmidt does not teach the use of a conveyor belt to move the material and for steaming treatment.

Tong et al disclose a process of making gluten-free pasta out of rice flour. The process comprises the steps of generating a mixture of rice flour, mixing the rice flour with water to form a moisten mixture, passing the mixture into a premixer to form into granules, conveying the granules to a steaming chamber, conveying the steamed granules into an extruder, forming pasta strand , conveying the strands to a second steaming chamber and then drying the strands (see page 1).

The use of conveyor belt to move material and the use of placing vapor or steam treatment on conveyor belt are known in the art as shown by Tong et al. It would have been obvious to one skilled in the art to use the Tong et al system as an alternative known method for conveying and processing material. Using an alternative known method to carry out the same function would have been an obvious matter of choice.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Toh, Kuwada et al and Sowbhagya et al all disclose processes of making gluten-free pasta.

References BA and BB on the IDS filed on 8/17/06 will not be considered because there are no English abstracts or discussion of their relevancy.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien T. Tran whose telephone number is 571-272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on 571-272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 22, 2010

/Lien T Tran/

Primary Examiner, Art Unit 1781